

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SCOTT ANTHONY PAULI,

Defendant.

Case No. 2:16-cr-00252-APG-NJK

REPORT & RECOMMENDATION

(Docket No. 16)

This matter was referred to the undersigned Magistrate Judge on Defendant Scott Anthony Pauli's Motion to Suppress Evidence. Docket No. 16. On January 19, 2017, and January 31, 2017, the Court held an evidentiary hearing on Defendant's motion. Docket Nos. 26, 33. The Court has considered Defendant's motion, the United States' response, Defendant's reply, the evidence adduced at the evidentiary hearing on this matter, and the parties' arguments. Docket Nos. 16, 19, 23, 26, 33.<sup>1</sup>

**I. BACKGROUND**

**A. Testimony of Police Officer Diasparra**

On July 13, 2016, Las Vegas Metropolitan Police Department (LVMPD) Police Officer Vincent Diasparra was on duty in uniform, in a marked vehicle. Hearing Tr. (1/19/2017) at 1:12 p.m.<sup>2</sup> On that date, LVMPD Detective Bourque told Officer Diasparra that he had received

<sup>1</sup>Citations to the recording of the hearing are noted by "Hearing Tr." followed by the relevant date and time of the hearing, as no written transcript has been prepared.

<sup>2</sup>Although Officer Diasparra was wearing a body camera, he "probably" did not activate it. Hearing Tr. (1/19/2017) at 1:39 p.m. It is LVMPD policy to activate it during a traffic stop. Hearing Tr. (1/19/2017) at 1:39 - 1:40 p.m.

1 information regarding a subject, Defendant Scott Pauli, who had a police officer's firearm in his  
2 possession. Hearing Tr. (1/19/2017) at 1:12, 1:14, 1:40, 1:44 p.m. Detective Bourque provided  
3 Officer Diasparra with Defendant's information, including his vehicle, criminal history, and location.  
4 Hearing Tr. (1/19/2017) at 1:12 - 1:13 p.m. Additionally, Officer Diasparra conducted a records  
5 check on his computer, and found that Defendant had a prior conviction for possessing a firearm,  
6 but does not recall anything else on the criminal record. Hearing Tr. (1/19/2017) at 1:13 p.m.  
7 Officer Diasparra did not recall when the firearm conviction occurred. Hearing Tr. (1/19/2017) at  
8 1:13 p.m. On cross-examination, however, it was established that the conviction at issue was a  
9 weapons conviction, not a firearm conviction, from 2009. Hearing Tr. (1/19/2017) at 1:44, 1:47,  
10 2:33 - 2:34 p.m.

11 Detective Bourque told Officer Diasparra to stage at a location, where the officer waited for  
12 more information from Detective Bourque. Hearing Tr. (1/19/2017) at 1:14 p.m. Officer Diasparra  
13 understood that when and if Defendant's vehicle was mobile, he was supposed to stop it. Hearing  
14 Tr. (1/19/2017) at 1:18, 1:41 p.m. Officer Diasparra parked his car at Desert Inn and Sandhill  
15 because it was near where Detective Bourque was conducting surveillance. Hearing Tr. (1/19/2017)  
16 at 1:41 - 1:42 p.m. While Officer Diasparra waited, he spoke with Detective Bourque over the phone  
17 and the radio. Hearing Tr. (1/19/2017) at 1:15 p.m. During this time, Detective Bourque provided  
18 the officer with Defendant's vehicle description and plate number. Hearing Tr. (1/19/2017) at 1:15  
19 p.m. The plan was for Detective Bourque to tell Officer Diasparra when the vehicle was mobile, so  
20 the officer could stop it, if there was reason to do so. Hearing Tr. (1/19/2017) at 1:43 - 1:44 p.m.  
21 After Officer Diasparra was at the staging area for approximately a half hour to an hour, Detective  
22 Bourque stated over the radio that Defendant's vehicle was moving, and that the plate on the car was  
23 the incorrect plate, which police officers call "cold plating."<sup>3</sup> Hearing Tr. (1/19/2017) at 1:16 - 1:18,  
24 1:49 p.m.

25 Defendant's vehicle was traveling erratically, at a high rate of speed when Officer Diasparra  
26 came into contact with it. Hearing Tr. (1/19/2017) at 1:19, 2:35 p.m. He pulled the vehicle over at

---

27  
28 <sup>3</sup>A cold plated vehicle is a vehicle that is registered to someone, but has a plate from a  
different vehicle on it. Hearing Tr. (1/19/2017) at 1:17 p.m.

1 95 and Galleria. Hearing Tr. (1/19/2017) at 1:20 p.m.<sup>4</sup> The vehicle was stopped on the side of the  
2 road, near a dirt lot, after it exited I-95. Hearing Tr. (1/19/2017) at 1:23 p.m. Officer Diasparra  
3 immediately exited his car and approached the vehicle from the driver's side. He asked Defendant,  
4 who was the driver, for his registration. Hearing Tr. (1/19/2017) at 1:24 - 1:25, 1:57 - 1:58 p.m.  
5 The registration was valid and had the correct plate number, not the cold-plated plate number, on it.  
6 Hearing Tr. (1/19/2017) at 1:25, 1:59 p.m. At some point, Officer Diasparra noticed that the  
7 incorrect plate was velcroed on top of the valid plate for the vehicle. Hearing Tr. (1/19/2017) at 1:59  
8 - 2:01 p.m. Officer Diasparra could not recall if he asked Defendant for his driver's license. Hearing  
9 Tr. (1/19/2017) at 2:02 p.m.

10 Officer Diasparra asked Defendant to exit the vehicle, which he did. Hearing Tr. (1/19/2017)  
11 at 1:26, 2:03 p.m. Officer Diasparra escorted Defendant to the front of his patrol car where, for  
12 officer safety, he performed a patdown for weapons. Hearing Tr. (1/19/2017) at 1:26, 2:03, 2:05  
13 p.m. He did so because Detective Bourque told him Defendant was "supposed to be" in possession  
14 of a police officer's firearm and because Defendant's criminal history indicated that he "had firearms  
15 illegally." Hearing Tr. (1/19/2017) at 1:26 - 1:27 p.m. Also, cold plated cars "are sometimes  
16 associated to" violent crimes or violent criminals with weapons. Hearing Tr. (1/19/2017) at 1:27  
17 p.m. In Defendant's right pants pocket, Officer Diasparra immediately felt what he knew to be a  
18 glass smoking pipe. Hearing Tr. (1/19/2017) at 1:27, 2:05 p.m.<sup>5</sup> Officer Diasparra handcuffed  
19 Defendant so that he could safely retrieve the pipe from Defendant's pocket. Officer Diasparra  
20 thought the pipe was paraphernalia, though he knew that possession of a glass smoking pipe is not  
21 illegal unless it contains residue of illegal drugs, and he did not know that it contained meth residue  
22 until he pulled it out of Defendant's pocket. Hearing Tr. (1/19/2017) at 1:28, 2:30 - 2:31 p.m. The  
23

---

24 <sup>4</sup>Though Officer Diasparra followed Defendant's vehicle for a time on I-95, he waited for the  
25 vehicle to exit the freeway before pulling it over. He does not like to pull vehicles over on the  
freeway because it is extremely dangerous. Hearing Tr. (1/19/2017) at 1:51 p.m.

26 <sup>5</sup>Defendant's criminal history contained a drug conviction from 2009. Hearing Tr.  
27 (1/19/2017) at 2:33 p.m. Defendant's criminal history also contained a March 2016 arrest for  
28 possession of drug paraphernalia, but Officer Diasparra did not recall noticing that arrest, as he paid  
attention only to the convictions for which Defendant was a registered felon. Hearing Tr.  
(1/19/2017) at 2:39 - 2:40 p.m.

1 officer retrieved the pipe and a baggie of methamphetamine from Defendant's pocket and placed him  
2 under arrest. Hearing Tr. (1/19/2017) at 1:28 p.m.

3 Officer Diasparra contacted Detective Bourque and told him his location, what he had found  
4 in Defendant's pocket, and that he had placed Defendant under arrest. Hearing Tr. (1/19/2017) at  
5 1:28 - 1:29 p.m. Approximately five to ten minutes later, Detective Bourque arrived on the scene.  
6 Hearing Tr. (1/19/2017) at 1:29 p.m. Detective Bourque took Defendant to the back of the patrol  
7 car, advised him of his *Miranda* rights, and spoke with him. Hearing Tr. (1/19/2017) at 1:29 - 1:30  
8 p.m.

9 Officer Diasparra and Detective Bourque decided to impound Defendant's vehicle. Hearing  
10 Tr. (1/19/2017) at 1:30 p.m. They made this decision because Defendant was the owner of the  
11 vehicle and was being placed under arrest. Additionally, the vehicle was not legally parked and  
12 could not be operated on a public roadway with the wrong plate. Hearing Tr. (1/19/2017) at 1:31,  
13 2:15 p.m. Officer Diasparra did not remember if Defendant asked to turn the car over to his  
14 passenger, who was over the age of 18. Hearing Tr. (1/19/2017) at 2:15 p.m. LVMPD policy allows  
15 the person arrested to turn the car over to a licensed driver over the age of 18 rather than LVMPD  
16 impounding the vehicle, if the person arrested is the registered owner of the vehicle. Hearing Tr.  
17 (1/19/2017) at 2:17 p.m.

#### 18 **B. Testimony of Detective Bourque**

19 During the summer of 2016, LVMPD Detective Stephan Bourque became aware that the  
20 vehicle of a LVMPD lieutenant was burglarized sometime in April 2016. Hearing Tr. (1/19/2017)  
21 at 2:43, 3:31 p.m. In July 2016, Detective Bourque received a phone call from a confidential  
22 informant who said he had information about an individual who was in possession of stolen police  
23 equipment, including a gun, taser and tactical vest. Hearing Tr. (1/19/2017) at 2:43 - 2:44, 3:31, 3:39  
24 - 3:40 p.m. The informant was someone who had been previously arrested, which is how Detective  
25 Bourque originally came in contact with him. Hearing Tr. (1/19/2017) at 3:20 p.m. The informant's  
26 criminal history includes an arrest for false information to a police officer. Hearing Tr. (1/31/2017)  
27 at 2:09 p.m. Detective Bourque made no effort to determine whether the informant was convicted  
28 of that offense. Hearing Tr. (1/31/2017) at 2:09 p.m. The informant's criminal history also includes

1 convictions for burglary, manufacturing controlled substances, trafficking controlled substances,  
2 attempted theft, and running a forgery lab. Hearing Tr. (1/31/2017) at 2:10 - 2:14, 2:19 - 2:21 p.m.  
3 The informant's criminal history indicates that he has been convicted of six separate felonies.  
4 Hearing Tr. (1/31/2017) at 2:19 p.m.

5 When Detective Bourque first met the informant, he told the informant to call him if he  
6 wanted to do any work, and gave him his phone number. Hearing Tr. (1/19/2017) at 3:22 p.m.  
7 When he was subsequently contacted by the informant with the information regarding Defendant,  
8 Detective Bourque did not offer any money for his information, or make any promises that he would  
9 be paid. Hearing Tr. (1/19/2017) at 3:23, 3:43 - 3:44 p.m. Detective Bourque registered the  
10 informant as a confidential informant specifically for this case, this was the first time Detective  
11 Bourque used this person as an informant, and the informant was paid for his work "after the fact."  
12 Hearing Tr. (1/19/2017) at 3:20, 3:22, 4:07 p.m. Detective Bourque no longer works with this  
13 informant. Hearing Tr. (1/19/2017) at 3:20 p.m.

14 The informant directed the detective to the specific address where Defendant Pauli lived, and  
15 gave particulars about Defendant himself, including his criminal history, his address, and who he  
16 was dating. Hearing Tr. (1/19/2017) at 2:44 - 2:45, 4:09 p.m.; Hearing Tr. (1/31/2017) at 2:16 p.m.  
17 After receiving the information from the informant, Detective Bourque tracked down the event  
18 number from the burglary of the lieutenant's vehicle to see what items had been taken, and found  
19 them to be consistent with the information given by the informant. Hearing Tr. (1/19/2017) at 2:45  
20 p.m. He then conducted a records and background check into Defendant and found that Defendant  
21 matched the information provided by the informant, including convictions for felonies. He also  
22 found a connection between Defendant and the residence address given to him by the informant.  
23 Hearing Tr. (1/19/2017) at 2:45 - 2:46, 2:47 p.m. Detective Bourque believed that the stolen items  
24 the confidential informant spoke of could be the items taken from the lieutenant's vehicle. Hearing  
25 Tr. (1/19/2017) at 2:47 p.m. He also checked social media, and determined that Defendant appeared  
26 to be in a relationship consistent with the information given by the informant. Hearing Tr.  
27 (1/19/2017) at 2:47 p.m. Detective Bourque also determined that Defendant's apparent girlfriend  
28

1 lived at the address given by the informant, and therefore deduced that Defendant could be living  
2 there as well. Hearing Tr. (1/19/2017) at 2:48 p.m.

3 The informant told Detective Bourque that Defendant drove a silver Cadillac, which he used  
4 to commit crimes. The informant also said that Defendant changed the plates on his vehicle in an  
5 effort to conceal the identity of the vehicle. Hearing Tr. (1/19/2017) at 2:48 p.m. Detective Bourque  
6 was able to confirm that Defendant was a registered owner of a vehicle that matched the description  
7 given by the informant, but did not confirm that the vehicle was used to commit crimes. Hearing  
8 Tr. (1/19/2017) at 2:49, 4:22 p.m. Detective Bourque believed that Defendant was in possession of  
9 property stolen from the lieutenant, partially because the informant said the property was stolen from  
10 a nice neighborhood and the lieutenant lived in Summerlin, and partially because he was able to  
11 corroborate the information the informant gave him about Defendant. Hearing Tr. (1/19/2017) at  
12 2:49 - 2:50, 4:22 p.m. Further, Detective Bourque believed that Defendant's burglary conviction  
13 shows that he is predisposed to commit "that type of crime." Hearing Tr. (1/19/2017) at 3:09 p.m.  
14 Detective Bourque does not recall whether he asked the informant if the informant was involved in  
15 the crime in any way, or had any of the stolen equipment. Hearing Tr. (1/19/2017) at 4:08 p.m.

16 On July 13, 2016, Detective Bourque set up surveillance on Defendant's residence. Hearing  
17 Tr. (1/19/2017) at 2:50, 2:52 p.m.; Hearing Tr. (1/31/2017) at 1:41 p.m. He did not keep  
18 surveillance logs, but documented the times of the surveillance in his officer's report. Hearing Tr.  
19 (1/19/2017) at 3:18 p.m. Detective Bourque watched the house, hoping that if Defendant left and  
20 the detective saw a crime, he could stop him and further his investigation. Hearing Tr. (1/19/2017)  
21 at 2:52 p.m. During the surveillance, he saw Defendant's vehicle leave the garage of the residence  
22 and travel through an alley at a high rate of speed, and he saw it fail to yield. Hearing Tr.  
23 (1/19/2017) at 2:52 - 2:53 p.m. Detective Bourque stayed at the residence to surveil it, but noticed  
24 that the vehicle had an incorrect plate on it. Hearing Tr. (1/19/2017) at 2:53 p.m. He called into  
25 records to have the plate checked, and determined that the plate on Defendant's vehicle was  
26 registered to a different vehicle. Hearing Tr. (1/19/2017) at 3:13 p.m. Detective Bourque relayed  
27 the information that the vehicle was cold plated, as well as the information as to the direction the  
28 vehicle was heading, to Officer Diasparra. Hearing Tr. (1/19/2017) at 2:54 - 2:55 p.m. When

1 Detective Bourque established surveillance on the residence, he knew that he wanted to have a  
2 uniform police officer in a marked vehicle available for a traffic stop if and when the vehicle left the  
3 residence, for officer safety. Hearing Tr. (1/19/2017) at 2:56 p.m.

4 Detective Bourque had already explained the investigation on which he was working to  
5 Officer Diasparra. Hearing Tr. (1/19/2017) at 2:56 p.m. Detective Bourque hoped to be able to stop  
6 Defendant's vehicle, find probable cause to arrest Defendant, and arrest him. He further hoped that  
7 Defendant would explain that the stolen items were inside his residence. Hearing Tr. (1/31/2017)  
8 at 1:53 - 1:54 p.m. Detective Bourque told Officer Diasparra that the investigation involved an  
9 officer's gun and taser, and that he believed the suspect was Defendant Pauli. Hearing Tr.  
10 (1/19/2017) at 2:56 p.m. He told Officer Diasparra that Defendant had an extensive criminal history,  
11 and that he was a five-time convicted felon, including a firearm conviction, a burglary, and drug-  
12 related offenses. Hearing Tr. (1/19/2017) at 2:56 - 2:57, 3:08 p.m.<sup>6</sup>

13 Detective Bourque had also observed on social media that Defendant was in great shape, so  
14 he wanted Officer Diasparra to know that Defendant was potentially armed with a police officer's  
15 gun or taser, and had been stopped with firearms before. Hearing Tr. (1/19/2017) at 2:57 p.m. The  
16 information given to Detective Bourque by the informant, however, was that Defendant had the gun  
17 at the house, not in his vehicle. Hearing Tr. (1/19/2017) at 3:57 - 3:59 p.m. Detective Bourque  
18 never asked the informant if Defendant carries a gun on his person. Hearing Tr. (1/19/2017) at 4:02 -  
19 4:03 p.m. Detective Bourque, made numerous comments during the hearing regarding what he  
20 thought about Defendant's possession of a gun during the traffic stop. Detective Bourque believed  
21 it was "possible" that Defendant had a gun in the vehicle. Hearing Tr. (1/19/2017) at 4:00 p.m. He  
22 "assume[d] that someone who has a gun that was stolen, they could potentially carry it." Hearing  
23 Tr. (1/19/2017) at 4:03 p.m. Detective Bourque "assumed that the gun was - it's possible it could  
24 be [in the vehicle] or not there." Hearing Tr. (1/19/2017) at 4:03 p.m. "I assumed that [Defendant]  
25 could potentially be armed with a firearm." Hearing Tr. (1/19/2017) at 4:33 p.m. "I would not know  
26 if [Defendant] was going to have a gun on him." Hearing Tr. (1/19/2017) at 4:36 - 4:37 p.m.

---

27  
28 <sup>6</sup>Detective Bourque noted that, although the SCOPE says Defendant's conviction is for a  
weapons charge, he presumed it to be a firearm. Hearing Tr. (1/19/2017) at 4:06 p.m.



1 Detective Bourque knew, from the informant, when the vehicle would be leaving the  
2 residence. Hearing Tr. (1/31/2017) at 1:46 p.m. The informant said that Defendant was going to go  
3 out and commit crimes with checks that day. Hearing Tr. (1/31/2017) at 1:47 p.m. When the vehicle  
4 started moving, Detective Bourque put the information that the vehicle was moving out over the  
5 radio. Hearing Tr. (1/19/2017) at 4:23 p.m. Detective Bourque also told Officer Diasparra that the  
6 vehicle was cold plated. Hearing Tr. (1/19/2017) at 2:58 p.m. Detective Bourque told Officer  
7 Diasparra to be safe while stopping the car due to all of the information he had about Defendant.  
8 Hearing Tr. (1/19/2017) at 2:58 p.m. Before the vehicle left the residence, Detective Bourque told  
9 Officer Diasparra he wanted him to conduct a vehicle stop on Defendant's vehicle. Hearing Tr.  
10 (1/19/2017) at 2:59 p.m.

11 Detective Bourque arrived on the scene approximately 25 - 30 minutes after the vehicle stop.  
12 Hearing Tr. (1/19/2017) at 3:00 p.m. When he arrived on the scene, he recognized Defendant.  
13 Hearing Tr. (1/19/2017) at 3:00 p.m. Detective Bourque made the decision to arrest Defendant,  
14 based on the information the Officer Diasparra relayed to him. Hearing Tr. (1/19/2017) at 3:01 p.m.  
15 By the time Detective Bourque arrived on the scene, Defendant was already in handcuffs and under  
16 arrest, but Detective Bourque took over and made the official arrest. Hearing Tr. (1/19/2017) at 3:10  
17 - 3:11 p.m. The passenger was also in handcuffs when Detective Bourque arrived on the scene.  
18 Hearing Tr. (1/19/2017) at 4:38 p.m.

19 Detective Bourque then conducted an inventory of Defendant's vehicle. Hearing Tr.  
20 (1/19/2017) at 3:02 p.m. He inventoried the vehicle due to the fact that he determined he was going  
21 to tow the vehicle because it was cold plated, parked on the side of the road, Defendant had no proof  
22 of insurance, and Defendant was arrested for possession of meth. Hearing Tr. (1/19/2017) at 3:02,  
23 3:04 p.m. Detective Bourque noted, however, that the vehicle's registered plate was located  
24 underneath the fictitious plate. Hearing Tr. (1/19/2017) at 3:48 p.m. He further stated that he did  
25 not call in or check on the computer whether Defendant had appropriate insurance, just that he did  
26 not see the actual insurance card. Hearing Tr. (1/19/2017) at 3:49 - 3:50, 4:31 - 4:32 p.m.; Hearing  
27 Tr. (1/31/2017) at 1:51 p.m. The passenger was present on the scene until after the vehicle was  
28 searched, but Detective Bourque could not recall if the passenger possessed a valid driver's license,



1 or even if he checked whether the passenger possessed a valid driver's license. Hearing Tr.  
2 (1/19/2017) at 3:50 - 3:51, 4:26 - 4:27 p.m.

3 After the vehicle was impounded, Detective Bourque interviewed Defendant and, among  
4 other things, asked about some of the items in the vehicle. Some of the items in Defendant's vehicle  
5 were items that had been stolen from the lieutenant's vehicle. Hearing Tr. (1/19/2017) at 3:03 p.m.  
6 Detective Bourque would have been surprised if all of the stolen items were in the vehicle.  
7 "Sometimes it's there, sometimes it isn't there when we're doing investigations." Hearing Tr.  
8 (1/19/2017) at 3:53 p.m.

9 After completing the vehicle inventory, where officers found two forged identification cards,  
10 a forged check, and some of the missing police equipment, Detective Bourque went to Defendant's  
11 residence. Hearing Tr. (1/19/2017) at 3:04 p.m.; Docket No. 16-1 at 5, 11. He applied for, and  
12 obtained, a telephonic search warrant for Defendant's residence. Hearing Tr. (1/19/2017) at 3:04  
13 p.m. In applying for the search warrant, Detective Bourque relied upon the information received  
14 from the informant, the records checks he conducted on that information, the stop of Defendant,  
15 Defendant's statement, observations made during surveillance, the amount of methamphetamine  
16 found on Defendant's person, and the items found in his vehicle during the vehicle inventory.  
17 Hearing Tr. (1/19/2017) at 3:04 - 3:05 p.m. Detective Bourque did not include information in his  
18 search warrant affidavit regarding the criminal history or the reliability of the informant. Hearing  
19 Tr. (1/19/2017) at 3:29 - 3:30 p.m.; Docket No. 16-1 at 2-7. He generally tries to establish probable  
20 cause in search warrant affidavits independently of the informant. Hearing Tr. (1/19/2017) at 3:30  
21 p.m.

## 22 **II. ANALYSIS**

### 23 **A. Credibility of Witnesses**

24 The Court ordered an evidentiary hearing in order to make an accurate determination of what  
25 occurred in the instant case and how the facts relate to the applicable caselaw. "The longstanding  
26 and repeated invocations in caselaw of the need of district courts to hear live testimony so as to  
27 further the accuracy and integrity of the factfinding process are not mere platitudes. Rather, live  
28 testimony is the bedrock of the search for truth in our judicial system." *United States v. Thoms*, 684

1 F.3d 893, 903 (9th Cir. 2012). “[J]udges simply cannot decide whether a witness is telling the truth  
 2 on the basis of a paper record and must observe the witnesses’ demeanor to best ascertain their  
 3 veracity - or lack thereof.” *Oshodi v. Holder*, 729 F.3d 883, 892 (9th Cir. 2013) (internal citation  
 4 omitted). *See also See United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000) (evidentiary  
 5 hearing required where defendant demonstrates that a significant disputed factual issue exists);  
 6 *United States v. Mejia*, 69 F.3d 309, 315 (9th Cir. 1995) (“There can be no doubt that seeing a  
 7 witness testify live assists the finder of fact in evaluating the witness’s credibility”).

8 During the evidentiary hearing in this matter, the Court had the opportunity to listen to the  
 9 testimony of all witnesses, to observe and evaluate each witness’ demeanor while testifying, and to  
 10 weigh each witness’ credibility. Having done so, the Court finds that both Officer Diasparra and  
 11 Detective Bourque testified credibly.

#### 12 **B. Traffic Stop**

13 Defendant does not contest the validity of the traffic stop itself. *See, e.g.*, Docket No. 23 at  
 14 4. Further, the testimony clearly demonstrated that Defendant’s vehicle was traveling at a high rate  
 15 of speed.

16 The Fourth Amendment to the United States Constitution guarantees “[t]he right of the  
 17 people to be secure in their persons, houses, papers, and effects, against unreasonable searches and  
 18 seizures.” “Because stopping an automobile and detaining its occupants, ‘even if only for a brief  
 19 period and for a limited purpose,’ constitutes a ‘seizure’ under the Fourth Amendment, an official  
 20 must have individualized ‘reasonable suspicion’ of unlawful conduct to carry out such a stop.”  
 21 *Tarabochia v. Adkins*, 766 F.3d 1115, 1121 (9th Cir. 2014) (quoting *Whren v. United States*, 517  
 22 U.S. 806, 809–10 (1996), and *Delaware v. Prouse*, 440 U.S. 648, 663 (1979)); *see United States v.*  
 23 *Lopez–Soto*, 205 F.3d 1101, 1104–05 (9th Cir. 2000) (holding that an investigative traffic stop  
 24 requires reasonable suspicion, not probable cause).

25 Officers may conduct a traffic stop if they have reasonable suspicion that a person is  
 26 committing, or is about to commit, a crime, including a traffic violation. *United States v. Choudhry*,  
 27 461 F.3d 1097, 1100 (9th Cir. 2006). “Reasonable suspicion” must be informed by specific,  
 28 articulable facts, along with objective and reasonable inferences. *Id.*

1 “[T]he constitutionality of a traffic stop does not depend on the subjective motivation or  
 2 intent of the officers.” *United States v. Wallace*, 213 F.3d 1216, 1219 (9th Cir.2000) (citing *Whren*,  
 3 517 U.S. at 813). Therefore, “[t]he fact that the alleged traffic violation is a pretext for the stop is  
 4 irrelevant, so long as the objective circumstances justify the stop.” *Id.*

5 The testimony clearly established that Defendant was traveling at a high rate of speed, and  
 6 that he failed to yield. The Court therefore finds that the traffic stop was valid.

#### 7 **C. Order for Defendant to Exit Vehicle**

8 Defendant submits that Officer Diasparra improperly ordered him to exit the vehicle.<sup>7</sup> The  
 9 United States contends that Officer Diasparra acted properly. Docket No. 19 at 5-6.

10 When “a motor vehicle has been lawfully detained for a traffic violation, the police officers  
 11 may order the driver to get out of the vehicle without violating the Fourth Amendment, ... because  
 12 the government’s ‘legitimate and weighty’ interest in officer safety outweighs the ‘*de minimis*’  
 13 additional intrusion of requiring a driver, already lawfully stopped, to exit the vehicle.” *Arizona v.*  
 14 *Johnson*, 555 U.S. 323, 325 (2009). *See also Maryland v. Wilson*, 519 U.S. 408, 410 (1997)  
 15 (internal citation omitted) (an officer “may as a matter of course order the driver of a lawfully  
 16 stopped car to exit his vehicle...”); *United States v. Williams*, 419 F.3d 1029, 1030 (9th Cir. 2005)  
 17 (citing *Maryland v. Wilson*, 519 U.S. 408, 410 (1997)) (“it is well established that an officer  
 18 effecting a lawful traffic stop may order the driver and the passengers out of a vehicle”)

19 Accordingly, the Court finds that Officer Diasparra appropriately ordered Defendant and his  
 20 passenger to exit the vehicle during the lawful traffic stop.

#### 21 **D. Patdown**

22 Defendant submits that Officer Diasparra had no basis to conduct a patdown of Defendant.  
 23 Docket No. 16 at 7-8. He notes that Detective Bourque’s report indicates that Officer Diasparra  
 24 conducted the patdown “based off of the previous history and circumstances surrounding the  
 25 vehicle.” *Id.* at 8. Further, Defendant submits that his prior felony convictions are not sufficient to  
 26

---

27 <sup>7</sup>Defendant’s motion to suppress indicates that does not contest the legality of Officer  
 28 Diasparra’s order to exit the vehicle. Docket No. 16 at 7. At the beginning of the evidentiary  
 hearing, however, his counsel indicated that Defendant does, in fact, contest the legality of the order.

1 provide reasonable suspicion that he was presently armed and dangerous. *Id.* at 8-9. Finally,  
2 Defendant contends that the information received indicates that Defendant possessed a firearm at his  
3 residence, and not on his person. *Id.* at 9.

4 The United States responds that Officer Diasparra had reasonable suspicion to conduct the  
5 patdown “due to the fact that the vehicle was cold-plated and as a result of the Defendant’s extensive  
6 criminal history.” Docket No. 19 at 8. The United States further submits that Defendant “was  
7 properly patted down for weapons based off the circumstances surrounding this vehicle and the  
8 Defendant’s involvement in the burglary of a LVMPD Lieutenant’s firearm and his known criminal  
9 history.” *Id.* In support of its argument, the United States cites only to one case, *United States v.*  
10 *Davis*, 636 F.3d 1281 (10th Cir. 2011). In addition to the fact that this case is from the Tenth  
11 Circuit, the facts of the case do not include a patdown of the driver or passenger of the vehicle, and  
12 the case does not address the standards related to a patdown in any way. *Id.*

13 Defendant replies that Officer Diasparra did not possess reasonable suspicion that Defendant  
14 was armed and presently dangerous. Docket No. 23 at 5-7. Defendant outlines the facts in the  
15 instant case to demonstrate that they do not rise to the level of reasonable suspicion. *Id.* Defendant  
16 therefore asks the Court to suppress all evidence obtained as a result of his patdown. *Id.* at 7.

17 A patdown of a person for weapons requires reasonable suspicion that the person “is armed  
18 and presently dangerous to the officer or to others.” *Thomas v. Dillard*, 818 F.3d 864, 876 (9th Cir.  
19 2016) (quoting *Terry v. Ohio*, 392 U.S. 1, 24 (1968)). “A lawful frisk does not always flow from  
20 a justified stop.” *United States v. Thomas*, 863 F.2d 622, 628 (9th Cir. 1988). To the contrary, each  
21 element, “the stop and the frisk, must be analyzed separately, the reasonableness of each must be  
22 independently determined.” *Thomas*, 818 F.3d at 876.

23 In order to establish reasonable suspicion that a person is presently armed and dangerous for  
24 the purpose of justifying a patdown, “the police officer must be able to point to specific and  
25 articulable facts which, taken together with rational inferences from those facts, reasonably warrant  
26 that intrusion.” *Id.* (quoting *Terry*, 392 U.S. at 21). “A mere inchoate and unparticularized  
27 suspicion or hunch that a person is armed and dangerous does not establish reasonable suspicion.”  
28 *Id.* (internal citation omitted).

1 To determine whether reasonable suspicion existed at the time of the patdown, a Court  
 2 considers the “totality of the circumstances surrounding the stop.” *United States v. Burkett*, 612 F.3d  
 3 1103, 1107 (9th Cir. 2010). “Reasonable suspicion is an objective standard, asking whether a  
 4 reasonably prudent person would have been warranted in believing the suspect was armed and thus  
 5 presented a threat to the officer’s safety while he was investigating his suspicious behavior.”  
 6 *Thomas*, 818 F.3d at 876.

7 Reasonable suspicion to justify a patdown or frisk is analyzed objectively under the “totality  
 8 of the circumstances surrounding the stop,” and in light of the “collective knowledge of the officers  
 9 involved, and the inferences reached by experienced, trained officers.” *United States v. Burkett*, 612  
 10 F.3d 1103, 1107 (9th Cir. 2010) (quoting *United States v. Hall*, 974 F.2d 1201, 1204 (1992)). The  
 11 crime of which the person is suspected is relevant, as can be the location and time of day. *See United*  
 12 *States v. Mattarolo*, 209 F.3d 1153, 1158 (9th Cir. 2000) (finding relevant the fact that the frisk  
 13 occurred “on a remote section of road at midnight” and was of a nighttime burglary suspect). Other  
 14 factors that have been found relevant include nervous or aggressive behavior, bulges in an  
 15 individual's clothing, and association with gang members or other criminals. *See Tuttelman v. City*  
 16 *of San Jose*, 420 Fed.Appx. 758, 761 (9th Cir. 2011) (citing cases); *United States v. Montes*, 343  
 17 Fed.Appx. 288, 288 (9th Cir.2009). Additionally, although “a prior criminal history alone cannot  
 18 establish reasonable suspicion ... it is permissible to consider such a fact as part of the total calculus  
 19 of information.” *Burrell v. McIlroy*, 464 F.3d 853, 858 n. 3 (9th Cir. 2006).

20 It is well established that the Fourth Amendment’s exclusionary rule applies to statements  
 21 and evidence obtained as a product of illegal searches and seizures. *Wong Sun v. United States*, 371  
 22 U.S. 471, 484-88 (1963). Evidence obtained by such illegal action of the police is “fruit of the  
 23 poisonous tree,” warranting application of the exclusionary rule if, “granting establishment of the  
 24 primary illegality, the evidence to which instant objection is made has been come at by exploitation  
 25 of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.”  
 26 *United States v. Crawford*, 372 F.3d 1048, 1054 (9th Cir. 2004) (*en banc*) (citing *Brown v. Illinois*,  
 27 422 U.S. 590, 599 (1975)). The exclusionary rule requires a causal connection between the illegal  
 28 conduct and the evidence sought to be suppressed. *Crawford*, 372 F.3d at 1054. “When there is a

1 close causal connection between the illegal seizure and the confession, not only is exclusion of the  
2 evidence more likely to deter similar police misconduct in the future, but also use of the evidence  
3 is more likely to compromise the integrity of the courts.” *Dunaway v. New York*, 442 U.S. 200, 218  
4 (1979). Whether the twin aims of deterrence and judicial integrity warrant application of the  
5 exclusionary rule depends largely on the facts of each case. *Brown*, 422 U.S. at 603.

6 In determining whether the taint has been sufficiently purged, the Ninth Circuit asks  
7 “whether, granting establishment of the primary illegality, the evidence . . . has been come at by  
8 exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the  
9 primary taint.” *United States v. Millan*, 36 F.3d 886, 890 (9th Cir. 1994) (internal quotation marks  
10 omitted).

11 In this instance, Detective Bourque initially observed Defendant traveling at a high rate of  
12 speed and failing to yield in a residential area. He decided not to stop the vehicle at that time and,  
13 instead, contacted Officer Diasparra with Defendant’s whereabouts. Officer Diasparra followed  
14 Defendant for a period of time, and eventually decided to stop his vehicle by the side of the road.  
15 The stop occurred at nighttime, but there is no indication that it occurred in a remote location.  
16 Additionally, no testimony was elicited that Defendant engaged in nervous or aggressive behavior;  
17 that he had suspicious bulges in his clothing; or that he was a gang member or one who associated  
18 with violent criminals.

19 Officer Diasparra conducted the patdown because Defendant was “supposed to be” in  
20 possession of a police officer’s firearm and because Defendant’s criminal history indicated that he  
21 “had firearms illegally.” Also, cold plated cars “are sometimes associated to” violent crimes or  
22 violent criminals with weapons.

23 Defendant’s criminal record indicated that he had a weapons conviction from 2009, as well  
24 as some other nonviolent convictions. Detective Bourque’s investigation into Defendant involved  
25 police equipment, including a handgun, that had been stolen three months earlier. The information  
26 given to Detective Bourque was that Defendant possessed the handgun inside his residence.  
27 Detective Bourque had been given no information that Defendant engaged in violent crimes, that he  
28 had a habit of carrying a gun on his person, or that he was carrying a gun on his person that night.

1 When asked about this issue at the hearing, Detective Bourque testified that he believed it  
 2 was “possible” that Defendant had a gun in the vehicle. He also testified that the “assume[d] that  
 3 someone who has a gun that was stolen, they could potentially carry it.” Detective Bourque  
 4 “assumed that the gun was - it’s possible it could be [in the vehicle] or not there.” He also testified  
 5 that he “assumed that [Defendant] could potentially be armed with a firearm,” and that he “would  
 6 not know if [Defendant] was going to have a gun on him.”

7 Neither Officer Diasparra nor Detective Bourque had reasonable suspicion to believe that  
 8 Defendant was armed at the time of the stop of the vehicle. Additionally, neither one ever testified  
 9 that they believed Defendant was presently dangerous to himself or other officers, even if he had  
 10 been armed. Accordingly, the Court finds that the patdown of Defendant was unlawful. The Court  
 11 further finds that the glass pipe and methamphetamine recovered from the patdown are the fruits of  
 12 that unlawful patdown. These fruits cannot be sufficiently distinguished from the patdown to purge  
 13 the evidence of its primary taint.<sup>8</sup>

#### 14 **E. Inventory Search of Vehicle**

15 The Fourth Amendment secures “the right of the people to be secure in their persons, houses,  
 16 papers, and effects against unreasonable searches and seizures.” U.S.CONST.AMEND. IV. Since  
 17 warrantless searches and seizures are *per se* unreasonable, the government bears the burden of  
 18 showing that a warrantless search and seizure falls within an exception to the Fourth Amendment’s  
 19 warrant requirement. *United States v. Cervantes*, 703 F.3d 1135, 1141 (9th Cir. 2012). Evidence  
 20 obtained in violation of the Fourth Amendment, including any “fruit of the poisonous tree,” must  
 21 be suppressed. *Id.*

22 “Inventory searches have been held constitutional if they are conducted in accordance with  
 23 the standard procedures of the agency conducting the search or come under another exception to the  
 24 Fourth Amendment warrant requirement.” *United States v. Ramos-Oseguera*, 120 F.3d 1028, 1036  
 25 (9th Cir. 1997). Once a vehicle has been legally impounded, the police may conduct an inventory  
 26

---

27 <sup>8</sup>Defendant also argues that Officer Diasparra improperly extended the stop. Docket No. 16  
 28 at 6. The Court need not reach this issue, however, as the Court has determined that the patdown  
 was not lawful.



1 search, as long as it conforms to the standard procedures of the local police department. *South*  
2 *Dakota v. Opperman*, 428 U.S. 364, 375–76 (1976); *see also United States v. Wanless*, 882 F.2d  
3 1459, 1463 (9th Cir.1989). Inventory procedures protect an owner’s property while it is in the  
4 custody of the police, insure against claims of lost, stolen, or vandalized property, and guard the  
5 police from danger. *Colorado v. Bertine*, 479 U.S. 367, 372 (1987).

6 In this case, Detective Bourque and Officer Diasparra conducted the inventory search on  
7 Defendant’s vehicle because they decided to impound the vehicle after arresting Defendant. The  
8 Court, however, has determined that the patdown was unlawful and the pipe and methamphetamine  
9 for which Defendant was placed under arrest were fruits of that unlawful patdown. Therefore,  
10 Defendant’s no evidence remains for which Defendant could have been arrested at that time. As the  
11 inventory search occurred due to the arrest, the Court finds that it was unlawful. The evidence  
12 recovered from the vehicle due to the unlawful inventory search is fruit of the unlawful inventory  
13 search.<sup>9</sup>

#### 14 **F. Search Warrant of Residence**

15 Defendant submits that the search warrant application submitted by Detective Bourque relied  
16 exclusively on information from the informant and evidence discovered from the search of  
17 Defendant’s person and vehicle. Docket No. 16 at 14. Defendant submits that, since the evidence  
18 discovered during the patdown and search of the vehicle were unlawfully obtained, they cannot  
19 contribute to the probable cause determination; therefore, the sufficiency of the affidavit depends  
20 entirely on information provided by the informant. *Id.* Despite this fact, Defendant contends, the  
21 affidavit provided no information that could give the issuing judge a basis on which to determine that  
22 the informant was reliable. *Id.* at 14-15. Defendant therefore submits that the warrant lacks probable  
23 cause and was improperly issued, and that the gun found at Defendant’s residence should be  
24 suppressed. *Id.* at 15.

---

25  
26  
27 <sup>9</sup>There was also testimony about LVMPD’s policies regarding towing vehicles. The Court  
28 need not reach the issue of whether the officers violated LVMPD’s policy, which would also  
invalidate the inventory search, as the Court determines that the inventory search was invalid for an  
independent reason.

1 In response, the United States submits that the judge who issued the search warrant had a  
2 substantial basis for concluding that Detective Bourque's affidavit established probable cause.  
3 Docket No. 19 at 10. The United States submits that corroboration of an informant's information  
4 "by independent police work is of significant value," and that Detective Bourque corroborated the  
5 informant's information "in major part." *Id.* The United States submits that the informant provided  
6 accurate information about Defendant's "criminal history, residential location, relationship status,  
7 make and model of the vehicle he owned, and involvement in the burglary of [the] Lieutenant's  
8 police equipment, as well as the timeframe of the burglary." *Id.* at 10-11. Further, the United States  
9 submits that Courts should give deference to the issuing court, and that the state court judge in this  
10 instant case "had an opportunity to listen to Detective Bourque's extensive, detailed Search Warrant  
11 Declaration." *Id.* at 11. The United States therefore submits that there "is no reason to question"  
12 the issuance of the search warrant, and asks the Court to deny Defendant's motion. *Id.* at 11-12.

13 In reply, Defendant submits that the search warrant affidavit contains tainted information -  
14 the evidence unlawfully recovered from the car stop. Docket No. 23 at 10. When an affidavit  
15 contains tainted information, Defendant submits, the reviewing court must strike that information  
16 and analyze whether the remaining information constitutes probable cause without the usual  
17 deference owed to the issuing court. *Id.* Defendant contends that the remaining information fails  
18 to establish probable cause to search his residence and, therefore, asks the Court to grant his motion.  
19 *Id.* at 11-13.

20 The probable cause standard for a search warrant is whether, based on common sense  
21 considerations, there was "a fair probability that contraband or evidence of a crime [would] be found  
22 in a particular place." *United States v. DeLeon*, 979 F.2d 761, 764 (9th Cir.1992) (citing *Illinois v.*  
23 *Gates*, 462 U.S. 213, 238 (1983)). The issuing judge need not determine "that the evidence is more  
24 likely than not to be found where the search takes place.... The [judge] need only conclude that it  
25 would be reasonable to seek the evidence in the place indicated in the affidavit." *United States v.*  
26 *Ocampo*, 937 F.2d 485, 490 (9th Cir.1991) (citation and internal quotation marks omitted). Neither  
27 certainty nor a preponderance of the evidence is required. *United States v. Kelley*, 482 F.3d 1047,  
28

1 1050–51 (9th Cir. 2007) (citing *Gates*, 462 U.S. at 246 and *United States v. Gourde*, 440 F.3d 1065,  
2 1069 (9th Cir. 2006) (*en banc*)).

3 Probable cause is “a fluid concept turning on the assessment of probabilities and the  
4 particular factual context not readily, or even usefully, reduced to a neat set of legal rules,” and its  
5 existence must be determined by an analysis of the totality of the circumstances surrounding the  
6 intrusion. *Gates*, 462 U.S. at 232. Probable cause does not deal with hard certainties, but with  
7 probabilities. *Id.* at 241; *see also Brinegar v. United States*, 338 U.S. 160, 175 (1949) (probable  
8 cause deals with “probabilities” which are not technical, but factual and practical considerations of  
9 everyday life on which reasonable and prudent people, not legal technicians act). As noted above,  
10 the Supreme Court defines probable cause to search as “a fair probability that contraband or evidence  
11 of a crime will be found in a particular place.” *Gates*, 462 U.S. at 238. An issuing judge’s  
12 determination of probable cause in a search warrant affidavit is paid great deference by a reviewing  
13 court. *United States v. Krupa*, 658 F.3d 1174, 1177 (9th Cir. 2011).

14 When some of the evidence included in a search warrant affidavit is tainted, that taint alone  
15 does not render the search warrant invalid. *United States v. Nora*, 765 F.3d 1049, 1058 (9th Cir.  
16 2014) (internal citation omitted). Instead, the warrant will remain valid if, after excising the tainted  
17 evidence, the affidavit’s “remaining untainted evidence would provide a neutral magistrate [judge]  
18 with probable cause to issue a warrant.” *United States v. Reed*, 15 F.3d 928, 933 (9th Cir. 1994)  
19 (internal quotation omitted). Thus, after excising the glass pipe and methamphetamine found on  
20 Defendant’s person and the items found in his vehicle, this Court must determine whether the  
21 remaining untainted evidence was sufficient to support issuance of the warrant. That determination  
22 is made without the usual deference owed to the issuing judge’s initial finding of probable cause.  
23 *Kelley*, 482 F.3d at 1051.

24 In determining probable cause for a search warrant affidavit that relies upon information  
25 given by an informant, the issuing judge “should consider an informant’s veracity, reliability and  
26 basis of knowledge.” *United States v. Alvarez*, 358 F.3d 1194, 1203 (9th Cir. 2004) (internal  
27 quotation omitted). The totality of the circumstances approach “permits a balanced assessment of  
28 the relative weights of all the various indicia of reliability (and unreliability)” surrounding

1 informants' tips. *Gates*, 462 U.S. at 234. Even if the reliability of a confidential source is not clearly  
2 established, the credibility of the statement is “enhanced” when the statement gives a detailed  
3 account of events that is corroborated by the statements of other confidential informants. *Alvarez*,  
4 358 F.3d at 1203. *See also United States v. Hernandez–Escarsega*, 886 F.2d 1560, 1566 (9th  
5 Cir.1989) (“Although the reliability of several of [the] confidential sources was not clearly  
6 established, the detailed nature of many of their statements and the interlocking nature of their stories  
7 enhanced their credibility”).

8 In determining whether probable cause existed for the issuance of the search warrant, a court  
9 must consider the credibility of the informant, including his history of providing reliable information  
10 in previous investigations and any prior criminal convictions for crimes of dishonesty. *United States*  
11 *v. Martinez-Garcia*, 397 F.3d 1205, 1216 (9th Cir. 2005); *United States v. Reeves*, 210 F.3d 1041,  
12 1045 (9th Cir. 2000). The Court must also examine whether the information given by the informant  
13 was bolstered by independent police investigation of the tip or corroboration by other confidential  
14 informants. *Martinez-Garcia*, 397 F.3d at 1216; *Alvarez*, 358 F.3d at 1203; *United States v. Bishop*,  
15 264 F.3d 919, 925–926 (9th Cir. 2001).

16 When the Court excises all information regarding the items recovered from Defendant’s  
17 person and vehicle from the search warrant affidavit, all that remains is the information given by the  
18 informant and Detective Bourque’s corroboration of said information. Docket No. 16-1 at 2-7. The  
19 affidavit is silent, however, regarding the informant’s reliability, veracity, and basis of knowledge.  
20 *Id.* Additionally, the affidavit fails to inform the issuing court that the informant has prior felony  
21 convictions and prior convictions for crimes of dishonesty. *Id.* Further, the majority of the  
22 information that Detective Bourque was able to corroborate was information regarding easily  
23 observable actions of Defendant, including his vehicle, his residence, and his girlfriend. The other  
24 information - that regarding burglary and forgery - involved the types of crimes for which the  
25 informant also had convictions, but the issuing judge was never made aware of this information.  
26 Considering the totality of the circumstances of the remaining information in the affidavit, including  
27 the lack of information regarding the reliability and veracity of the informant, the informant’s  
28 criminal record, and the fact that the information about Defendant was the type readily known by

1 anyone who knew him, and the lack of deference to the issuing court, the Court finds that probable  
2 cause did not exist for the issuance of the search warrant for Defendant's residence.

3 **RECOMMENDATION**

4 Based on the foregoing and good cause appearing therefore,

5 IT IS RECOMMENDED that Defendant's Motion to Suppress Evidence, Docket No. 16, be  
6 **GRANTED.**

7 IT IS FURTHER RECOMMENDED that the Court suppress the glass pipe and bag of  
8 methamphetamine found on Defendant's person, the items found in his vehicle, and the gun found  
9 in his residence.

10 **NOTICE**

11 Pursuant to Local Rule IB 3-2 **any objection to this Report and Recommendation must**  
12 **be in writing and filed with the Clerk of the Court within 14 days of service of this document.**

13 The Supreme Court has held that the courts of appeal may determine that an appeal has been waived  
14 due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142  
15 (1985). This Circuit has also held that (1) failure to file objections within the specified time and (2)  
16 failure to properly address and brief the objectionable issues waives the right to appeal the District  
17 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951  
18 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir.  
19 1983).

20 DATED this 14th day of February, 2017.

21  
22  
23   
24 NANCY J. KOPPE  
25 United States Magistrate Judge  
26  
27  
28